United States Department of Labor
Employees' Compensation Appeals Board

K.E., Appellant	)	
and	)	**Docket No. 21-1266**
	)	**Issued: May 13, 2022**
U.S. POSTAL SERVICE, POST OFFICE, Phoenix, AZ, Employer	)	

Appearances:
Alan J. Shapiro, Esq., for the appellant[1]
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
JANICE B. ASKIN, Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On August 19, 20201 appellant, through counsel, filed a timely appeal from a July 19, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id*. An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id*.; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq*.

ISSUE

The issue is whether OWCP properly treated appellant's request for work shoes as a recurrence of the need for medical treatment.

FACTUAL HISTORY

On December 14, 2018 appellant, then a 37-year-old city carrier, filed an occupational disease claim Form CA-2) alleging that he developed a bilateral toe condition due to factors of his federal employment, including excessive walking. He indicated that he first became aware of his condition and related it to his federal employment on December 11, 2018.

In a December 12, 2018 report, Dr. Richard Jacoby, a podiatrist, reported that appellant had worked as a mail carrier for four years and had developed blistering of both feet over the prior three weeks. He noted that he had examined appellant's employing establishment certified shoes, which appeared to be fairly new and adequate. Dr. Jacoby noted that x-rays were taken of appellant's feet which revealed hyperostosis, mainly of the 3rd and 4th toes that had caused blistering and clavus formation of the interphalangeal joints of the 3rd through 5th toes. He related that debridement was undertaken. Dr. Jacoby diagnosed "hyperostosis, bilateral toes with acute inflammation secondary to excessive walking at the [employing establishment]." In a December 14, 2018 report, he diagnosed blistering and cellulitis of the feet with hammertoes.

In a January 21, 2019 report, Dr. Jacoby noted that appellant had chronic and recurring blisters for three days after appellant's route was changed necessitating seven hours of walking. He related that appellant's shoe gear was a problem. Dr. Jacoby recommended wider shoes and provided a prescription for a wide shoe.

On January 30, 2019 OWCP referred appellant, along with a statement of accepted facts (SOAF), a copy of the case record, and a series of questions, to Dr. Michael A. Steingart, an osteopathic sports medicine specialist, for a second opinion evaluation regarding the causal relationship between his claimed conditions and the factors of appellant's federal employment.

In a March 1, 2019 report, Dr. Steingart noted appellant's factual and medical history, and his physical examination findings. He related that appellant recently had a job change which "triggered this." Dr. Steingart related that appellant's shoes were too narrow for appellant's feet and he needed much wider shoes, but that the shoe company recommended by the employing establishment only had medium-sized shoes. He did not diagnose appellant with hammertoes. Dr. Steingart diagnosed bilateral foot pain secondary to use of narrow shoes. He explained that appellant's subjective complaints represented a footwear issue as appellant was having excessive rubbing along the inner and outer aspects of the foot. Dr. Steingart noted that appellant had a preexisting condition of a long second toe. He further explained that appellant's job required walking and standing, and appellant needed appropriate shoe wear, including a wider and longer shoe. Dr. Steingart noted that appellant had a size 11 service shoe, but appellant's nonservice shoe size was 11.5. He further noted that he did not find that appellant had cellulitis, and that there were no excessive calluses and no blistering. Dr. Steingart opined, "[t]he problem is strictly related to [appellant's] shoe wear." He further opined that appellant "wearing a soft shoe does not

suffer residuals of the injury. The medical examination and radiographs do not show whether the claimant has a treatable actual injury at this time other than change in his shoe wear."

On March 15, 2019 OWCP accepted the claim for cellulitis of the right and left toe, resolved.

In a March 27, 2019 memorandum of telephone call (Form CA-110), appellant indicated that he was having problems with shoes from the shoe vendor that the employing establishment recommended and explained that his shoes did not fit. He inquired whether he would be authorized to obtain shoes from a medical shoe shop and noted that he did not want his case to be closed because he would need new shoes every year.

On November 15, 2020 appellant filed a notice of recurrence (Form CA-2a) and noted that his shoe insoles were worn out and that he needed to replace them.

In a November 24, 2020 development letter, OWCP informed appellant of the deficiencies of his claim for a recurrence, advised him of the type of factual and medical evidence needed, and provided a questionnaire for his completion. It afforded him 30 days to respond. Appellant did not respond.

By decision dated February 19, 2021, OWCP denied appellant's claim for a recurrence. It found that the evidence did not establish that the requested medical treatment was due to a worsening of the accepted work-related conditions. OWCP explained that the second opinion physician had determined that his accepted condition of cellulitis of right and left toe had resolved and no medical evidence was received since that time. It further explained that appellant had not established a recurrence of the work-related conditions without an intervening cause, and his claim for medical care remained closed.

On March 2, 2021 counsel for appellant requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review, which was held on May 26, 2021. During the hearing, appellant explained that the shoes from the employing establishment vendor were too hard and did not fit and he had to return them. He noted that he found a vendor that accepted the "work card" from the employing establishment and they measured his feet and that the shoes had obtained were a perfect fit. However, appellant explained that, a year had passed, the shoes were worn out, and the vendor no longer accepted the employing establishment work allowance. He indicated that he was willing to pay for the shoes and be reimbursed.

By decision dated July 19, 2021, an OWCP hearing representative affirmed the May 20, 2019 decision.

LEGAL PRECEDENT

Section 8103(a) of FECA[3] provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce

[3] *Id*.

the degree, or the period of disability, or aid in lessening the amount of monthly compensation.[4] While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.[5]

Section 10.310(a) of OWCP's implementing regulations provide that an employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.[6]

In interpreting section 8103(a), the Board has recognized that OWCP has broad discretion in approving services provided under section 8103, with the only limitation on OWCP's authority is that of reasonableness.[7] OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.[8] In order to be entitled to reimbursement for medical expenses, a claimant must establish that the expenditures were incurred for treatment of the effects of an employment-related injury by submitting rationalized medical evidence that supports such a connection and demonstrates that the treatment is necessary and reasonable.[9]

Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.[10]

ANALYSIS

The Board finds that this case is not in posture for decision.

The Board notes that, in a March 1, 2019 report, the second opinion physician, Dr. Steingart, discussed appellant's factual and medical history. After examining appellant, Dr. Steingart opined that "[t]he problem is strictly related to his shoe wear." He explained that appellant needed a wider, better fitting, and longer shoe, and that the shoe vendor recommended

[4] 5 U.S.C. § 8103; *see O.M.*, Docket No. 20-0640 (issued April 19, 2021); *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *G.A.*, Docket No. 18-0872 (issued October 5, 2018); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[5] *See D.K.*, Docket No. 20-0002 (issued August 25, 2020); *R.M.*, Docket No. 19-1319 (issued December 10, 2019); *Debra S. King*, 44 ECAB 203, 209 (1992).

[6] 20 C.F.R. § 10.310(a); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Services and Supplies*, Chapter 3.400.3.d(5) (October 1995); *id.* at Chapter 2.810.17.h (June 2014); *J.M.*, Docket No. 20-0457 (issued July 16, 2020); *D.W.*, Docket No. 19-0402 (issued November 13, 2019).

[7] *D.K.*, *supra* note 5; *M.B.*, Docket No. 17-1679 (issued February 8, 2018); *see D.K.*, 59 ECAB 141 (2007).

[8] *See D.K.*, *supra* note 5; *A.W.*, Docket No. 16-1812 (issued March 15, 2017).

[9] *M.G.*, Docket No. 18-0099 (issued April 26, 2018); *see Debra S. King*, *supra* note 5.

[10] *M.G.*, *id.*; *see Minnie B. Lewis*, 53 ECAB 606 (2002).

by the employing establishment only had medium shoes while appellant needed a wider shoe. Dr. Steingart noted that appellant did not suffer residuals when wearing the required shoes. However, as appellant explained at the hearing that, after wearing the proper shoes for a year, the shoes had worn out and he needed to replace them. He also explained that the employer-recommended vendor did not offer wide shoes and that the vendor from whom appellant had obtained the proper shoes no longer accepted a payment voucher from the employer.

OWCP has the discretion to authorize medical services, appliances and supplies pursuant to section 8103 and the only limitation on its authority is that of reasonableness.[11] It has discretion to authorize medical supplies which it considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of monthly compensation.[12] In denying appellant's request for shoe reimbursement, OWCP evaluated the request as a request for recurrence of disability, rather than a request for medical supplies. Its second opinion physician opined that appellant's employment factors required wider, better fitting, and longer shoes, than those available through the employing establishment's vendor.

It is well established that proceedings under FECA are not adversarial in nature, nor is OWCP a disinterested arbiter. While the claimant has the burden of proof to establish entitlement to compensation, OWCP shares the responsibility in the development of the evidence to see that justice is done.[13] Accordingly, once OWCP undertakes to develop the medical evidence further, it has the responsibility to do so in a manner that will resolve the relevant issues in the case.[14] In this case, OWCP found that the evidence of record did not establish that appellant continued to require wider and longer shoes due to a worsening of his accepted condition. However, it did not develop and make findings as to whether he required authorization for wider and longer shoes to give relief from his accepted employment injury.

On remand OWCP shall request a supplemental report from Dr. Steingart to obtain a rationalized medical opinion on whether or not appellant has a continuing need for periodic replacement of the shoes prescribed by Dr. Steingart, causally related to the accepted December 11, 2018 employment injury. If Dr. Steingart is unavailable or unwilling to provide a supplemental opinion, OWCP shall refer appellant, together with a SOAF and a list of specific questions, to another second opinion physician in the appropriate field of medicine to resolve the issue. Following this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

[11] *See D.K.*, *supra* note 5; *A.W.*, Docket No. 16-1812 (issued March 15, 2017).

[12] 5 U.S.C. § 8103; *see O.M.*, Docket No. 20-0640 (issued April 19, 2021); *N.G.*, Docket No. 18-1340 (issued March 6, 2019); *G.A.*, Docket No. 18-0872 (issued October 5, 2018); *see Thomas W. Stevens*, 50 ECAB 288 (1999).

[13] *W.H.*, Docket No. 21-0139 (issued October 26, 2021); *C.R.*, Docket No. 20-1102 (issued January 8, 2021); *K.P.*, Docket No. 18-0041 (issued May 24, 2019).

[14] *M.T.*, Docket No. 20-0321 (issued April 26, 2021); *T.K.*, Docket No. 20-0150 (issued July 9, 2020); *T.C.*, Docket No. 17-1906 (issued January 10, 2018).

CONCLUSION

The Board finds that this case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the July 19, 2021 decision of the Office of Workers' Compensation Programs is set aside and remanded for further proceedings consistent with this decision of the Board.

Issued: May 13, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
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